

Sec.

## SUBCHAPTER VIII—ADDITIONAL MISCELLANEOUS PROVISIONS

442. Applicability to United States intelligence activities of Federal laws implementing international treaties and agreements.
- (a) In general.
  - (b) Authorized intelligence activities.

**§ 401. Congressional declaration of purpose**

In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States; to provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security; to provide a Department of Defense, including the three military Departments of the Army, the Navy (including naval aviation and the United States Marine Corps), and the Air Force under the direction, authority, and control of the Secretary of Defense; to provide that each military department shall be separately organized under its own Secretary and shall function under the direction, authority, and control of the Secretary of Defense; to provide for their unified direction under civilian control of the Secretary of Defense but not to merge these departments or services; to provide for the establishment of unified or specified combatant commands, and a clear and direct line of command to such commands; to eliminate unnecessary duplication in the Department of Defense, and particularly in the field of research and engineering by vesting its overall direction and control in the Secretary of Defense; to provide more effective, efficient, and economical administration in the Department of Defense; to provide for the unified strategic direction of the combatant forces, for their operation under unified command, and for their integration into an efficient team of land, naval, and air forces but not to establish a single Chief of Staff over the armed forces nor an overall armed forces general staff.

(July 26, 1947, ch. 343, § 2, 61 Stat. 496; Aug. 10, 1949, ch. 412, § 2, 63 Stat. 579; Pub. L. 85-599, § 2, Aug. 6, 1958, 72 Stat. 514.)

## REFERENCES IN TEXT

This legislation, referred to in text, means act July 26, 1947, ch. 343, 61 Stat. 495, as amended, known as the National Security Act of 1947. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

## AMENDMENTS

1958—Pub. L. 85-599 amended section generally, and, among other changes, provided that each military department shall be separately organized, instead of separately administered, under its own Secretary and shall function under the direction, authority, and control of the Secretary of Defense, and inserted provisions relating to establishment of unified or specified combatant commands and for elimination of unnecessary duplication.

1949—Act Aug. 10, 1949, provided that the military departments shall be separately administered but be under the direction of the Secretary of Defense, and that there shall not be a single Chief of Staff over the armed forces nor an armed forces general staff.

## EFFECTIVE DATE

Section 310 of act July 26, 1947, provided:

“(a) The first sentence of section 202(a) [section 171a of former Title 5, Executive Departments and Government Officers and Employees] and sections 1, 2, 307, 308, 309, and 310 [section 171 note of former Title 5, section 361 of this title, and sections 171m and 171n of former Title 5] shall take effect immediately upon the enactment of this Act [July 26, 1947].

“(b) Except as provided in subsection (a), the provisions of this Act [sections 171 to 171f, 181-1, 181-2, 411a, 411b, 626 to 626d of former Title 5, section 24 of Title 3, The President, and sections 401 to 405 of this title] shall take effect on whichever of the following days is the earlier: The day after the day upon which the Secretary of Defense first appointed takes office, or the sixtieth day after the date of the enactment of this Act [July 26, 1947].”

## SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-293, title VIII, § 801, Oct. 11, 1996, 110 Stat. 3474, provided that: “This title [enacting sections 403, 403-1, 403-5a, and 403t of this title, amending sections 402, 403, 403-3 to 403-6, and 404d of this title and sections 5314 and 5315 of Title 5, Government Organization and Employees, repealing former section 403 of this title, and enacting provisions set out as notes under sections 403-3, 403-4, and 403t of this title] may be cited as the ‘Intelligence Renewal and Reform Act of 1996’.”

## SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-359, title VIII, § 801, Oct. 14, 1994, 108 Stat. 3434, provided that: “This title [enacting sections 402a, 435 to 438, and 1821 to 1829 of this title, section 2170b of the Appendix to this title, section 1599 [now 1611] of Title 10, Armed Forces, and section 1924 of Title 18, Crimes and Criminal Procedure, amending section 783 of this title, section 2170 of the Appendix to this title, section 8312 of Title 5, Government Organization and Employees, section 1604 of Title 10, and sections 793, 794, 798, 3071, and 3077 of Title 18, enacting provisions set out as notes under sections 435 and 1821 of this title, and amending provisions set out as notes under sections 402 and 1801 of this title] may be cited as the ‘Counterintelligence and Security Enhancements Act of 1994’.”

## SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-496, title VII, § 701, Oct. 24, 1992, 106 Stat. 3188, provided that: “This title [enacting sections 401a and 403-3 to 403-6 of this title, amending sections 402, 403, 404, and 404a of this title, and repealing section 403-1 of this title] may be cited as the ‘Intelligence Organization Act of 1992’.”

## SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-477, § 1, Oct. 15, 1984, 98 Stat. 2209, provided: “That this Act [enacting sections 431 and 432 of this title, amending section 552a of Title 5, Government Organization and Employees, and enacting provisions set out as notes under sections 431 and 432 of this title] may be cited as the ‘Central Intelligence Agency Information Act’.”

## SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97-200, § 1, June 23, 1982, 96 Stat. 122, provided: “That this Act [enacting subchapter IV of this chapter] may be cited as the ‘Intelligence Identities Protection Act of 1982’.”

## SHORT TITLE OF 1949 AMENDMENT

Section 1 of act Aug. 10, 1949, provided that: “This Act [enacting sections 408 and 412 of this title and sections 171-1, 171t, 172, 172a to 172d, and 172f to 172j of former Title 5, Executive Departments and Government Officers and Employees, amending this section, sections 151, 402, 403d, 405, 410, 459, 481, and 494 of this title, sections 171, 171a, 171b to 171d, 171e to 171j, 171n, 171r, 172e, 411b, and 626c of former Title 5, section 1748b of Title 12, Banks and Banking, section 1517 of Title 15,

Commerce and Trade, sections 474, 481 to 484, and 487 of Title 40, Public Buildings, Property, and Works, section 364a of Title 43, Public Lands, sections 1156 and 1157 of former Title 49, Transportation, and section 1193 of the Appendix to this title, and enacting provisions set out as notes under this section and sections 171 and 171c of former Title 5] may be cited as the 'National Security Act Amendments of 1949'."

#### SHORT TITLE

Section 1 of act July 26, 1947, provided: "That this Act [enacting this section, sections 401a to 403, 404, 405, and 408 to 412 of this title, and sections 171, 171-1, 171-2, 171a, 171b to 171d, 171e to 171j, 171k to 171m, 171n, 172, 172a to 172d, 172f to 172j, 181-1, 181-2, 411a, 411b, 626, 626a to 626c, and 626d of former Title 5, Executive Department and Government Officers and Employees, amending sections 1, 11, and 172e of former Title 5, section 1517 of Title 15, Commerce and Trade, and section 72 of former Title 31, Money and Finance, and enacting provisions set out as notes under this section and section 135 of Title 10, Armed Forces] may be cited as the 'National Security Act of 1947'."

Sections of National Security Act of 1947, which were classified to former Title 5, were repealed and restated in Title 10, Armed Forces, except as noted, as follows:

<i>Section of former Title 5</i>	<i>Section of Title 10</i>
171 .....	131, 133.
171a(a), (b) .....	133.
171a(c) .....	125, 136, 141, 3010, 3012, 5011, 5031, 8010, 8012.
171a(d) .....	133.
171a(e) .....	132.
171a(f) .....	133.
171a(g)-(i) .....	[Omitted].
171a(j) .....	124.
171c .....	134, 135, 136, 718, 2358.
171c-1, 171c-2 .....	[Repealed].
171d .....	1580.
171e .....	171.
171f .....	141, 142.
171g .....	143.
171h .....	2201.
171i .....	2351.
171j .....	173.
172 .....	136.
172a .....	3014, 5061, 8014.
172b .....	2203.
172c .....	2204.
172d .....	2208.
172e .....	2209.
172f .....	126.
172g .....	2205.
172h .....	2206.
172i .....	2701.
181-1 .....	101, 3011, 3012, 3062, T. 50 § 409.
181-2 .....	3012.
411a(a) .....	101; T. 50 § 409.
411a(b) .....	5012.
411a(c) .....	5013, 5402.
626(a) .....	8012.
626(b) .....	[Repealed].
626(c) .....	101; T. 50 § 409.
626(d) .....	8013.
626(e) .....	8012.
626(f) .....	8033.
626(g) .....	8011.
626a .....	8012.
626b .....	8013.
626c .....	743, 8062.

#### SAVINGS PROVISION

Section 12(g) of act Aug. 10, 1949, provided: "All laws, orders, regulations, and other actions relating to the National Military Establishment, the Departments of the Army, the Navy, or the Air Force, or to any officer or activity of such establishment or such departments,

shall, except to the extent inconsistent with the provisions of this Act [see Short Title of 1949 Amendment note above], have the same effect as if this Act had not been enacted; but, after the effective date of this Act [Aug. 10, 1949], any such law, order, regulation, or other action which vested functions in or otherwise related to any officer, department, or establishment, shall be deemed to have vested such function in or relate to the officer or department, executive or military, succeeding the officer, department, or establishment in which such function was vested. For purposes of this subsection the Department of Defense shall be deemed the department succeeding the National Military Establishment, and the military departments of Army, Navy, and Air Force shall be deemed the departments succeeding the Executive Departments of Army, Navy, and Air Force."

#### SEPARABILITY

Section 309 of act July 26, 1947, provided: "If any provision of this Act [see Short Title note above] or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby."

[Section 310(a) of act July 26, 1947, set out as an Effective Date note above, provided that section 309 of act July 26, 1947, is effective July 26, 1947.]

#### NATIONAL COMMISSION FOR THE REVIEW OF THE NATIONAL RECONNAISSANCE OFFICE

Pub. L. 106-120, title VII, Dec. 3, 1999, 113 Stat. 1620, provided that:

#### "SEC. 701. FINDINGS.

"Congress makes the following findings:

"(1) Imagery and signals intelligence satellites are vitally important to the security of the Nation.

"(2) The National Reconnaissance Office (in this title referred to as the 'NRO') and its predecessor organizations have helped protect and defend the United States for more than 30 years.

"(3) The end of the Cold War and the enormous growth in usage of information technology have changed the environment in which the intelligence community must operate. At the same time, the intelligence community has undergone significant changes in response to dynamic developments in strategy and in budgetary matters. The acquisition and maintenance of satellite systems are essential to providing timely intelligence to national policymakers and achieving information superiority for military leaders.

"(4) There is a need to evaluate the roles and mission, organizational structure, technical skills, contractor relationships, use of commercial imagery, acquisition of launch vehicles, launch services, and launch infrastructure, mission assurance, acquisition authorities, and relationship to other agencies and departments of the Federal Government of the NRO in order to assure continuing success in satellite reconnaissance in the new millennium.

#### "SEC. 702. NATIONAL COMMISSION FOR THE REVIEW OF THE NATIONAL RECONNAISSANCE OFFICE.

"(a) ESTABLISHMENT.—There is established a commission to be known as the 'National Commission for the Review of the National Reconnaissance Office' (in this title referred to as the 'Commission').

"(b) COMPOSITION.—The Commission shall be composed of 11 members, as follows:

"(1) The Deputy Director of Central Intelligence for Community Management.

"(2) Three members appointed by the Majority Leader of the Senate, in consultation with the Chairman of the Select Committee on Intelligence of the Senate, one from Members of the Senate and two from private life.

"(3) Two members appointed by the Minority Leader of the Senate, in consultation with the Vice Chair-

man of the Select Committee on Intelligence of the Senate, one from Members of the Senate and one from private life.

“(4) Three members appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Permanent Select Committee on Intelligence of the House of Representatives, one from Members of the House of Representatives and two from private life.

“(5) Two members appointed by the Minority Leader of the House of Representatives, in consultation with the ranking member of the Permanent Select Committee on Intelligence of the House of Representatives, one from Members of the House of Representatives and one from private life.

The Director of the National Reconnaissance Office shall be an ex officio member of the Commission.

“(c) MEMBERSHIP.—(1) The individuals appointed as members of the Commission shall be individuals who are nationally recognized for expertise, knowledge, or experience in—

“(A) technical intelligence collection systems and methods;

“(B) research and development programs;

“(C) acquisition management;

“(D) use of intelligence information by national policymakers and military leaders; or

“(E) the implementation, funding, or oversight of the national security policies of the United States.

“(2) An official who appoints members of the Commission may not appoint an individual as a member of the Commission if, in the judgment of the official, such individual possesses any personal or financial interest in the discharge of any of the duties of the Commission.

“(3) All members of the Commission appointed from private life shall possess an appropriate security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

“(d) CO-CHAIRS.—(1) The Commission shall have two co-chairs, selected from among the members of the Commission.

“(2) One co-chair of the Commission shall be a member of the Democratic Party, and one co-chair shall be a member of the Republican Party.

“(3) The individuals who serve as the co-chairs of the Commission shall be jointly agreed upon by the President, the Majority Leader of the Senate, the Minority Leader of the Senate, and Speaker of the House of Representatives, and the Minority Leader of the House of Representatives.

“(e) APPOINTMENT; INITIAL MEETING.—(1) Members of the Commission shall be appointed not later than 45 days after the date of the enactment of this Act [Dec. 3, 1999].

“(2) The Commission shall hold its initial meeting on the date that is 60 days after the date of the enactment of this Act.

“(f) MEETINGS; QUORUM; VACANCIES.—(1) After its initial meeting, the Commission shall meet upon the call of the co-chairs of the Commission.

“(2) Six members of the Commission shall constitute a quorum for purposes of conducting business, except that two members of the Commission shall constitute a quorum for purposes of receiving testimony.

“(3) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

“(4) If vacancies in the Commission occur on any day after 45 days after the date of the enactment of this Act, a quorum shall consist of a majority of the members of the Commission as of such day.

“(g) ACTIONS OF COMMISSION.—(1) The Commission shall act by resolution agreed to by a majority of the members of the Commission voting and present.

“(2) The Commission may establish panels composed of less than the full membership of the Commission for purposes of carrying out the duties of the Commission under this title. The actions of any such panel shall be subject to the review and control of the Commission. Any findings and determinations made by such a panel

shall not be considered the findings and determinations of the Commission unless approved by the Commission.

“(3) Any member, agent, or staff of the Commission may, if authorized by the co-chairs of the Commission, take any action which the Commission is authorized to take pursuant to this title.

#### “SEC. 703. DUTIES OF COMMISSION.

“(a) IN GENERAL.—The duties of the Commission shall be—

“(1) to conduct, until not later than the date on which the Commission submits the report under section 708(a), the review described in subsection (b); and

“(2) to submit to the congressional intelligence committees, the Director of Central Intelligence, and the Secretary of Defense a final report on the results of the review.

“(b) REVIEW.—The Commission shall review the current organization, practices, and authorities of the NRO, in particular with respect to—

“(1) roles and mission;

“(2) organizational structure;

“(3) technical skills;

“(4) contractor relationships;

“(5) use of commercial imagery;

“(6) acquisition of launch vehicles, launch services, and launch infrastructure, and mission assurance;

“(7) acquisition authorities; and

“(8) relationships with other agencies and departments of the Federal Government.

#### “SEC. 704. POWERS OF COMMISSION.

“(a) IN GENERAL.—(1) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title—

“(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths; and

“(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member considers necessary.

“(2) Subpoenas may be issued under paragraph (1)(B) under the signature of the co-chairs of the Commission, and may be served by any person designated by such co-chairs.

“(3) The provisions of sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192-194) shall apply in the case of any failure of a witness to comply with any subpoena or to testify when summoned under authority of this section.

“(b) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in advance in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

“(c) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any executive department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each such department, agency, bureau, board, commission, office, establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request of the co-chairs of the Commission. The Commission shall handle and protect all classified information provided to it under this section in accordance with applicable statutes and regulations.

“(d) ASSISTANCE FROM FEDERAL AGENCIES.—(1) The Director of Central Intelligence shall provide to the Commission, on a nonreimbursable basis, such administrative services, funds, staff, facilities, and other support services as are necessary for the performance of the Commission's duties under this title.

“(2) The Secretary of Defense may provide the Commission, on a nonreimbursable basis, with such administrative services, staff, and other support services as the Commission may request.

“(3) In addition to the assistance set forth in paragraphs (1) and (2), other departments and agencies of the United States may provide the Commission such services, funds, facilities, staff, and other support as such departments and agencies consider advisable and as may be authorized by law.

“(4) The Commission shall receive the full and timely cooperation of any official, department, or agency of the United States Government whose assistance is necessary for the fulfillment of the duties of the Commission under this title, including the provision of full and current briefings and analyses.

“(e) PROHIBITION ON WITHHOLDING INFORMATION.—No department or agency of the Government may withhold information from the Commission on the grounds that providing the information to the Commission would constitute the unauthorized disclosure of classified information or information relating to intelligence sources or methods.

“(f) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as the departments and agencies of the United States.

“(g) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property in carrying out its duties under this title.

#### “SEC. 705. STAFF OF COMMISSION.

“(a) IN GENERAL.—(1) The co-chairs of the Commission, in accordance with rules agreed upon by the Commission, shall appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its duties, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III or [of] chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable to a person occupying a position at level V of the Executive Schedule under section 5316 of such title.

“(2) Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

“(3) All staff of the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

“(b) CONSULTANT SERVICES.—(1) The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title.

“(2) All experts and consultants employed by the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

#### “SEC. 706. COMPENSATION AND TRAVEL EXPENSES.

“(a) COMPENSATION.—(1) Except as provided in paragraph (2), each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission under this title.

“(2) Members of the Commission who are officers or employees of the United States or Members of Congress shall receive no additional pay by reason of their service on the Commission.

“(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as per-

sons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

#### “SEC. 707. TREATMENT OF INFORMATION RELATING TO NATIONAL SECURITY.

“(a) IN GENERAL.—(1) The Director of Central Intelligence shall assume responsibility for the handling and disposition of any information related to the national security of the United States that is received, considered, or used by the Commission under this title.

“(2) Any information related to the national security of the United States that is provided to the Commission by a congressional intelligence committee may not be further provided or released without the approval of the chairman of such committee.

“(b) ACCESS AFTER TERMINATION OF COMMISSION.—Notwithstanding any other provision of law, after the termination of the Commission under section 708, only the Members and designated staff of the congressional intelligence committees, the Director of Central Intelligence and the designees of the Director, and such other officials of the executive branch as the President may designate shall have access to information related to the national security of the United States that is received, considered, or used by the Commission.

#### “SEC. 708. FINAL REPORT; TERMINATION.

“(a) FINAL REPORT.—Not later than November 1, 2000, the Commission shall submit to the congressional intelligence committees, the Director of Central Intelligence, and the Secretary of Defense a final report as required by section 703(a).

“(b) TERMINATION.—(1) The Commission, and all the authorities of this title, shall terminate at the end of the 120-day period beginning on the date on which the final report under subsection (a) is transmitted to the congressional intelligence committees.

“(2) The Commission may use the 120-day period referred to in paragraph (1) for the purposes of concluding its activities, including providing testimony to committees of Congress concerning the final report referred to in that paragraph and disseminating the report.

#### “SEC. 709. ASSESSMENTS OF FINAL REPORT.

“Not later than 60 days after receipt of the final report under section 708(a), the Director of Central Intelligence and the Secretary of Defense shall each submit to the congressional intelligence committees an assessment by the Director or the Secretary, as the case may be, of the final report. Each assessment shall include such comments on the findings and recommendations contained in the final report as the Director or Secretary, as the case may be, considers appropriate.

#### “SEC. 710. INAPPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.

“(a) FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Commission under this title.

“(b) FREEDOM OF INFORMATION ACT.—The provisions of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), shall not apply to the activities, records, and proceedings of the Commission under this title.

#### “SEC. 711. FUNDING.

“(a) TRANSFER FROM NRO.—Of the amounts authorized to be appropriated by this Act [see Tables for classification] for the National Reconnaissance Office, the Director of the National Reconnaissance Office shall transfer to the Director of Central Intelligence \$5,000,000 for purposes of the activities of the Commission under this title.

“(b) AVAILABILITY IN GENERAL.—The Director of Central Intelligence shall make available to the Commission, from the amount transferred to the Director under subsection (a), such amounts as the Commission may require for purposes of the activities of the Commission under this title.

“(c) DURATION OF AVAILABILITY.—Amounts made available to the Commission under subsection (b) shall remain available until expended.

“SEC. 712. CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.

“In this title, the term ‘congressional intelligence committees’ means the following:

“(1) The Select Committee on Intelligence of the Senate.

“(2) The Permanent Select Committee on Intelligence of the House of Representatives.”

COMMISSION ON ROLES AND CAPABILITIES OF UNITED STATES INTELLIGENCE COMMUNITY

Pub. L. 103-359, title IX, Oct. 14, 1994, 108 Stat. 3456, provided that:

“SEC. 901. ESTABLISHMENT.

“There is established a commission to be known as the Commission on the Roles and Capabilities of the United States Intelligence Community (hereafter in this title referred to as the ‘Commission’).

“SEC. 902. COMPOSITION AND QUALIFICATIONS.

“(a) MEMBERSHIP.—(1) The Commission shall be composed of 17 members, as follows:

“(A) Nine members shall be appointed by the President from private life, no more than four of whom shall have previously held senior leadership positions in the intelligence community and no more than five of whom shall be members of the same political party.

“(B) Two members shall be appointed by the majority leader of the Senate, of whom one shall be a Member of the Senate and one shall be from private life.

“(C) Two members shall be appointed by the minority leader of the Senate, of whom one shall be a Member of the Senate and one shall be from private life.

“(D) Two members shall be appointed by the Speaker of the House of Representatives, of whom one shall be a Member of the House and one shall be from private life.

“(E) Two members shall be appointed by the Minority Leader of the House of Representatives, of whom one shall be a Member of the House and one shall be from private life.

“(2) The members of the Commission appointed from private life under paragraph (1) shall be persons of demonstrated ability and accomplishment in government, business, law, academe, journalism, or other profession, who have a substantial background in national security matters.

“(b) CHAIRMAN AND VICE CHAIRMAN.—The President shall designate two of the members appointed from private life to serve as Chairman and Vice Chairman, respectively, of the Commission.

“(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner as the original appointment.

“(d) DEADLINE FOR APPOINTMENTS.—The appointments required by subsection (a) shall be made within 45 days after the date of enactment of this Act [Oct. 14, 1994].

“(e) MEETINGS.—(1) The Commission shall meet at the call of the Chairman.

“(2) The Commission shall hold its first meeting not later than four months after the date of enactment of this Act.

“(f) QUORUM.—Nine members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings, take testimony, or receive evidence.

“(g) SECURITY CLEARANCES.—Appropriate security clearances shall be required for members of the Commission who are private United States citizens. Such clearances shall be processed and completed on an expedited basis by appropriate elements of the executive branch of Government and shall, in any case, be completed within 90 days of the date such members are appointed.

“(h) APPLICATION OF CERTAIN PROVISIONS OF LAW.—In light of the extraordinary and sensitive nature of its

deliberations, the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), and the regulations prescribed by the Administrator of General Services pursuant to that Act, shall not apply to the Commission. Further, the provisions of section 552 of title 5, United States Code (commonly known as the ‘Freedom of Information Act’), shall not apply to the Commission; however, records of the Commission shall be subject to the Federal Records Act [probably means chapters 21 to 31 of Title 44, Public Printing and Documents] and, when transferred to the National Archives and Records Agency, shall no longer be exempt from the provisions of such section 552.

“SEC. 903. DUTIES OF THE COMMISSION.

“(a) IN GENERAL.—It shall be the duty of the Commission—

“(1) to review the efficacy and appropriateness of the activities of the United States intelligence community in the post-cold war global environment; and

“(2) to prepare and transmit the reports described in section 904.

“(b) IMPLEMENTATION.—In carrying out subsection (a), the Commission shall specifically consider the following:

“(1) What should be the roles and missions of the intelligence community in terms of providing support to the defense and foreign policy establishments and how should these relate to tactical intelligence activities.

“(2) Whether the roles and missions of the intelligence community should extend beyond the traditional areas of providing support to the defense and foreign policy establishments, and, if so, what areas should be considered legitimate for intelligence collection and analysis, and whether such areas should include, for example, economic issues, environmental issues, and health issues.

“(3) What functions, if any, should continue to be assigned to the organizations of the intelligence community, including the Central Intelligence Agency, and what capabilities should these organizations retain for the future.

“(4) Whether the existing organization and management framework of the organizations of the intelligence community, including the Central Intelligence Agency, provide the optimal structure for the accomplishment of their missions.

“(5) Whether existing principles and strategies governing the acquisition and maintenance of intelligence collection capabilities should be retained and what collection capabilities should the Government retain to meet future contingencies.

“(6) Whether intelligence analysis, as it is currently structured and executed, adds sufficient value to information otherwise available to the Government to justify its continuation, and, if so, at what level of resources.

“(7) Whether the existing decentralized system of intelligence analysis results in significant waste or duplication, and, if so, what can be done to correct these deficiencies.

“(8) Whether the existing arrangements for allocating available resources to accomplish the roles and missions assigned to intelligence agencies are adequate.

“(9) Whether the existing framework for coordinating among intelligence agencies with respect to intelligence collection and analysis and other activities, including training and operational activities, provides an optimal structure for such coordination.

“(10) Whether current personnel policies and practices of intelligence agencies provide an optimal work force to satisfy the needs of intelligence consumers.

“(11) Whether resources for intelligence activities should continue to be allocated as part of the defense budget or be treated by the President and Congress as a separate budgetary program.

“(12) Whether the existing levels of resources allocated for intelligence collection or intelligence

analysis, or to provide a capability to conduct covert actions, are seriously at variance with United States needs.

“(13) Whether there are areas of redundant or overlapping activity or areas where there is evidence of serious waste, duplication, or mismanagement.

“(14) To what extent, if any, should the budget for United States intelligence activities be publicly disclosed.

“(15) To what extent, if any, should the United States intelligence community collect information bearing upon private commercial activity and the manner in which such information should be controlled and disseminated.

“(16) Whether counterintelligence policies and practices are adequate to ensure that employees of intelligence agencies are sensitive to security problems, and whether intelligence agencies themselves have adequate authority and capability to address perceived security problems.

“(17) The manner in which the size, missions, capabilities, and resources of the United States intelligence community compare to those of other countries.

“(18) Whether existing collaborative arrangements between the United States and other countries in the area of intelligence cooperation should be maintained and whether such arrangements should be expanded to provide for increased burdensharing.

“(19) Whether existing arrangements for sharing intelligence with multinational organizations in support of mutually shared objectives are adequate.

#### “SEC. 904. REPORTS.

“(a) INITIAL REPORT.—Not later than two months after the first meeting of the Commission, the Commission shall transmit to the congressional intelligence committees a report setting forth its plan for the work of the Commission.

“(b) INTERIM REPORTS.—Prior to the submission of the report required by subsection (c), the Commission may issue such interim reports as it finds necessary and desirable.

“(c) FINAL REPORT.—No later than March 1, 1996, the Commission shall submit to the President and to the congressional intelligence committees a report setting forth the activities, findings, and recommendations of the Commission, including any recommendations for the enactment of legislation that the Commission considers advisable. To the extent feasible, such report shall be unclassified and made available to the public. Such report shall be supplemented as necessary by a classified report or annex, which shall be provided separately to the President and the congressional intelligence committees.

#### “SEC. 905. POWERS.

“(a) HEARINGS.—The Commission or, at its direction, any panel or member of the Commission, may, for the purpose of carrying out the provisions of this title, hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths to the extent that the Commission or any panel or member considers advisable.

“(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any intelligence agency or from any other Federal department or agency any information that the Commission considers necessary to enable the Commission to carry out its responsibilities under this section. Upon request of the Chairman of the Commission, the head of any such department or agency shall furnish such information expeditiously to the Commission.

“(c) POSTAL, PRINTING AND BINDING SERVICES.—The Commission may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other departments and agencies of the Federal Government.

“(d) SUBCOMMITTEES.—The Commission may establish panels composed of less than the full membership of the Commission for the purpose of carrying out the

Commission's duties. The actions of each such panel shall be subject to the review and control of the Commission. Any findings and determinations made by such a panel shall not be considered the findings and determinations of the Commission unless approved by the Commission.

“(e) AUTHORITY OF INDIVIDUALS TO ACT FOR COMMISSION.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take under this title.

#### “SEC. 906. PERSONNEL MATTERS.

“(a) COMPENSATION OF MEMBERS.—Each member of the Commission who is a private United States citizen shall be paid, if requested, at a rate equal to the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission. All members of the Commission who are Members of Congress shall serve without compensation in addition to that received for their services as Members of Congress.

“(b) TRAVEL EXPENSES.—Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

#### “(c) STAFF.—

“(1) IN GENERAL.—The Chairman of the Commission may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, appoint a staff director and such additional personnel as may be necessary to enable the Commission to perform its duties. The staff director of the Commission shall be appointed from private life, and such appointment shall be subject to the approval of the Commission as a whole. No member of the professional staff may be a current officer or employee of an intelligence agency, except that up to three current employees of intelligence agencies who are on rotational assignment to the Executive Office of the President may serve on the Commission staff, subject to the approval of the Commission as a whole.

“(2) COMPENSATION.—The Chairman of the Commission may fix the pay of the staff director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay fixed under this paragraph for the staff director may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title and the rate of pay for other personnel may not exceed the maximum rate payable for grade GS-15 of the General Schedule.

“(d) DETAIL OF GOVERNMENT EMPLOYEES.—Upon request of the Chairman of the Commission, the head of any Federal department or agency may detail, on a nonreimbursable basis, any personnel of that department or agency to the Commission to assist it in carrying out its administrative and clerical functions.

“(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of such title.

“(f) ADMINISTRATIVE AND SUPPORT SERVICES.—The Director of Central Intelligence shall furnish the Commission, on a non-reimbursable basis, any administrative and support services requested by the Commission consistent with this title.

#### “SEC. 907. PAYMENT OF COMMISSION EXPENSES.

“The compensation, travel expenses, per diem allowances of members and employees of the Commission,

and other expenses of the Commission shall be paid out of funds available to the Director of Central Intelligence for the payment of compensation, travel allowances, and per diem allowances, respectively, of employees of the Central Intelligence Agency.

“SEC. 908. TERMINATION OF THE COMMISSION.

“The Commission shall terminate one month after the date of the submission of the report required by section 904(c).

“SEC. 909. DEFINITIONS.

“For purposes of this title—

“(1) the term ‘intelligence agency’ means any agency, office, or element of the intelligence community;

“(2) the term ‘intelligence community’ shall have the same meaning as set forth in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)); and

“(3) the term ‘congressional intelligence committees’ refers to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.”

NATIONAL COMMISSION ON DEFENSE AND NATIONAL SECURITY

Pub. L. 101-511, title VIII, §8104, Nov. 5, 1990, 104 Stat. 1898, as amended by Pub. L. 102-172, title VIII, §8078, Nov. 26, 1991, 105 Stat. 1189, provided that:

“SECTION 1. This section establishes the National Commission on Defense and National Security.

“SEC. 2. FINDINGS.

“The Congress makes the following findings:

“(1) Recent revolutionary world events require a fundamental reassessment of the defense and national security policies of the United States.

“(2) Emerging democracies around the world will require political, technical, and economic assistance, as well as military assistance, from the developed free nations in order to thrive and to become productive members of the world community.

“(3) Real and potential military threats to the United States and its allies will continue to exist for the foreseeable future from not just the Soviet Union but also from terrorism and from Third World nations.

“(4) Proliferation of both sophisticated conventional weapons and of nuclear weapons could produce a world more dangerous than we have faced in the past.

“(5) Ethnic rivalries as well as economic inequalities may produce instabilities that could spark serious conflict.

“(6) In order to formulate coherent national policies to meet these challenges of a new world environment, it is essential for the United States to achieve a bipartisan consensus such as that which emerged following World War II.

“(7) Such a consensus can be fostered by the development of policy recommendations from a highly respected group of individuals who do not bear a partisan label and who possess critical expertise and experience.

“SEC. 3. ESTABLISHMENT.

“There is established a commission to be known as [the] National Commission on Defense and National Security (hereinafter in this Act referred to as the ‘Commission’). The Commission is established until 30 days following submission of the final report required by section 6 of this section.

“SEC. 4. DUTIES OF COMMISSION.

“(a) IN GENERAL.—The Commission shall analyze and make recommendations to the President and Congress concerning the national security and national defense policies of the United States.

“(b) MATTERS TO BE ANALYZED.—Matters to be analyzed by the Commission shall include the following:

“(1) The world-wide interests, goals, and objectives of the United States that are vital to the national security of the United States.

“(2) The political, economic, and military developments around the world and the implications of those developments for United States national security interests, including—

“(A) the developments in Eastern Europe and the Soviet Union;

“(B) the question of German unification;

“(C) the future of NATO and European economic integration;

“(D) the future of the Pacific Basin; and

“(E) potential instability resulting from regional conflicts or economic problems in the developing world.

“(3) The foreign policy, world-wide commitments, and national defense capabilities of the United States necessary to deter aggression and implement the national security strategy of the United States, including the contribution that can be made by bilateral and multilateral political and economic associations in promoting interests that the United States shares with other members of the world community.

“(4) The proposed short-term uses of the political, economic, military, and other elements of national power for the United States to protect or promote the interests and to achieve the goals and objectives referred to in paragraph (1).

“(5) Long-term options that should be considered further for a number of potential courses of world events over the remainder of the century and into the next century.

“SEC. 5. MEMBERSHIP.

“(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 10 members, as follows:

“(1) Three appointed by the President.

“(2) Three appointed by the Speaker of the House of Representatives.

“(3) One appointed by the minority leader of the House of Representatives.

“(4) Two appointed by the majority leader of the Senate.

“(5) One appointed by the minority leader of the Senate.

“(b) QUALIFICATIONS.—Persons appointed to the Commission shall be persons who are not officers or employees of the Federal Government (including Members of Congress) and who are specially qualified to serve on the Commission by virtue of their education, training, or experience.

“(c) TERMS.—Members shall be appointed for the life of the Commission. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

“(d) BASIC PAY.—Members of the Commission shall serve without pay.

“(e) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

“(f) CHAIRMAN AND VICE CHAIRMAN.—The Chairman of the Commission shall be designated by the President from among the members appointed by the President. The Vice Chairman of the Commission shall be designated by the Speaker of the House of Representatives from among the members appointed by the Speaker.

“(g) MEETINGS.—The Commission shall meet at the call of the Chairman or a majority of its members.

“(h) DEADLINE FOR APPOINTMENTS.—Members of the Commission shall be appointed not later than the end of the 30-day period beginning on the date of the enactment of this Act [Nov. 5, 1990].

“SEC. 6. REPORTS.

“(a) INITIAL REPORT.—The Commission shall transmit to the President and to Congress an initial report not later than six months after the date on which the Commission is first constituted with a quorum.

“(b) FINAL REPORT.—The Commission shall transmit to the President and to Congress a final report one year following submission of the initial report under subsection (a).

“(c) CONTENTS OF REPORTS.—The report under subsection (b) shall contain a detailed statement of the

findings and conclusions of the Commission concerning the matters to be studied by the Commission under section 4, together with its recommendations for such legislation and administrative actions as it considers appropriate. Such report shall include a comprehensive description and discussion of the matters set forth in section 4.

“(d) REPORTS TO BE UNCLASSIFIED.—Each such report shall be submitted in unclassified form.

“(e) ADDITIONAL AND MINORITY VIEWS.—Each report may include such additional and minority views as individual members of the Commission may request be included.

“SEC. 7. DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

“(a) DIRECTOR.—The Commission shall, without regard to section 5311(b) of title 5, United States Code, have a Director who shall be appointed by the Chairman and who shall be paid at a rate not to exceed the maximum rate of basic pay payable for GS-18 of the General Schedule.

“(b) STAFF.—The Chairman may appoint and fix the pay of such additional personnel as the Chairman considers appropriate.

“(c) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

“(d) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

“(e) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Act.

“SEC. 8. POWERS OF COMMISSION

“(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this Act, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

“(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

“(c) OBTAINING OFFICIAL DATA.—The Chairman or a designee on behalf of the Chairman may request information necessary to enable the Commission to carry out this Act directly from any department or agency of the United States.

“(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

“(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

“(f) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

“SEC. 9. INITIAL FUNDING OF COMMISSION.

“If funds are not otherwise available for the necessary expenses of the Commission for fiscal year 1991, the Secretary of Defense shall make available to the Commission, from funds available to the Secretary for the fiscal year concerned, such funds as the Commission requires. When funds are specifically appropriated

for the expenses of the Commission, the Commission shall reimburse the Secretary from such funds for any funds provided to it under the preceding sentence.”

[References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.]

INTELLIGENCE PRIORITIES AND REORGANIZATION

Pub. L. 101-510, div. A, title IX, §907, Nov. 5, 1990, 104 Stat. 1622, provided that:

“(a) REVISION OF PRIORITIES AND CONSOLIDATION OF FUNCTIONS.—The Secretary of Defense, together with the Director of Central Intelligence, shall conduct a joint review of all intelligence and intelligence-related activities in the Tactical Intelligence and Related Activities (TIARA) programs and the National Foreign Intelligence Program (NFIP). The Secretary, together with the Director, shall take the following actions with respect to those activities:

“(1) In cases in which redundancy or fragmentation exist, consolidate functions, programs, organizations, and operations to improve the efficiency and effectiveness of the conduct of those intelligence activities or programs.

“(2) Revise intelligence collection and analysis priorities and resource allocations to reflect changes in the international security environment.

“(3) Strengthen joint intelligence functions, operations, and organizations.

“(4) Improve the quality and independence of intelligence support to the weapons acquisition process.

“(5) Improve the responsiveness and utility of national intelligence systems and organizations to the needs of the combatant commanders.

“(b) PERSONNEL REDUCTIONS.—(1) The number of personnel assigned or detailed to the National Foreign Intelligence Program and related Tactical Intelligence and Related Activities programs shall be reduced by not less than 5 percent of the number of such personnel described in paragraph (2) during each of fiscal years 1992 through 1996.

“(2) The number of personnel referred to in paragraph (1) is the number of personnel assigned or detailed to such programs on September 30, 1990.”

FOREIGN INTELLIGENCE ELECTRONIC SURVEILLANCE

For provisions relating to the exercise of certain authority respecting foreign intelligence electronic surveillance, see Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, set out under section 1802 of this title.

CHANGE OF TITLES OF SECRETARY OF DEFENSE, ET AL.; REAPPOINTMENT

Section 12(f) of act Aug. 10, 1949, provided in part that: “The titles of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Under Secretaries and the Assistant Secretaries of the Departments of the Army, Navy, and Air Force, the Chairman of the Munitions Board, and the Chairman of the Research and Development Board, shall not be changed by virtue of this Act [see Short Title of 1949 Amendment note set out above] and the reappointment of the officials holding such titles on the effective date of this Act [Aug. 10, 1949] shall not be required.”

REORGANIZATION PLAN NO. 8 OF 1949

Section 12(i) of act Aug. 10, 1949, provided that: “Reorganization Plan Numbered 8 of 1949, which was transmitted to the Congress by the President on July 18, 1949 [set out in Appendix to Title 5, Government Organization and Employees] pursuant to the provisions of the Reorganization Act of 1949, shall not take effect, notwithstanding the provisions of section 6 of such Reorganization Act of 1949.”



## EX. ORD. NO. 10431. NATIONAL SECURITY MEDAL

Ex. Ord. No. 10431, Jan. 19, 1953, 18 F.R. 437, provided: 1. There is hereby established a medal to be known as the National Security Medal with accompanying ribbons and appurtenances. The medal and its appurtenances shall be of appropriate design, approved by the Executive Secretary of the National Security Council.

2. The National Security Medal may be awarded to any person, without regard to nationality, including members of the armed forces of the United States, for distinguished achievement or outstanding contribution on or after July 26, 1947, in the field of intelligence relating to the national security.

3. The decoration established by this order shall be awarded by the President of the United States or, under regulations approved by him, by such person or persons as he may designate.

4. No more than one National Security Medal shall be awarded to any one person, but for subsequent services justifying an award, a suitable device may be awarded to be worn with the Medal.

5. Members of the armed forces of the United States who are awarded the decoration established by this order are authorized to wear the medal and the ribbon symbolic of the award, as may be authorized by uniform regulations approved by the Secretary of Defense.

6. The decoration established by this order may be awarded posthumously.

## REGULATIONS GOVERNING THE AWARD OF THE NATIONAL SECURITY MEDAL

Pursuant to Paragraph 2 of Executive Order 10431, the following regulations are hereby issued to govern the award of the National Security Medal:

1. The National Security Medal may be awarded to any person without regard to nationality, including a member of the Armed Forces of the United States, who, on or after 26 July 1947, has made an outstanding contribution to the National intelligence effort. This contribution may consist of either exceptionally meritorious service performed in a position of high responsibility or of an act of valor requiring personal courage of a high degree and complete disregard of personal safety.

2. The National Security Medal with accompanying ribbon and appurtenances, shall be of appropriate design to be approved by the Executive Secretary of the National Security Council.

3. The National Security Medal shall be awarded only by the President or his designee for that purpose.

4. Recommendations may be submitted to the Executive Secretary of the National Security Council by any individual having personal knowledge of the facts of the exceptionally meritorious conduct or act of valor of the candidate in the performance of outstanding services, either as an eyewitness or from the testimony of others who have personal knowledge or were eyewitnesses. Any recommendations shall be accompanied by complete documentation, including where necessary, certificates, affidavits or sworn transcripts of testimony. Each recommendation for an award shall show the exact status, at the time of the rendition of the service on which the recommendation is based, with respect to citizenship, employment, and all other material factors, of the person who is being recommended for the National Security Medal.

5. Each recommendation shall contain a draft of an appropriate citation to accompany the award of the National Security Medal.

## EXECUTIVE ORDER NO. 11905

Ex. Ord. No. 11905, Feb. 18, 1976, 41 F.R. 7703, as amended by Ex. Ord. No. 11985, May 13, 1977, 42 F.R. 25487; Ex. Ord. No. 11994, June 1, 1977, 42 F.R. 28869, which related to United States foreign intelligence activities, was superseded by Ex. Ord. No. 12036, Jan. 24, 1978, 43 F.R. 3674, formerly set out below.

## EXECUTIVE ORDER NO. 12036

Ex. Ord. No. 12036, Jan. 24, 1978, 43 F.R. 3674, as amended by Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, which related to United States foreign intelligence activities, was revoked by Ex. Ord. No. 12333, Dec. 4, 1981, 46 F.R. 59941, set out below.

## EX. ORD. NO. 12333. UNITED STATES INTELLIGENCE ACTIVITIES

Ex. Ord. No. 12333, Dec. 4, 1981, 46 F.R. 59941, provided:

## TABLE OF CONTENTS

## Preamble

## PART 1. GOALS, DIRECTION, DUTIES, AND RESPONSIBILITIES WITH RESPECT TO THE NATIONAL INTELLIGENCE EFFORT

## Sec.

1.1	Goals
1.2	The National Security Council
1.3	National Foreign Intelligence Advisory Groups
1.4	The Intelligence Community
1.5	Director of Central Intelligence
1.6	Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies
1.7	Senior Officials of the Intelligence Community
1.8	The Central Intelligence Agency
1.9	The Department of State
1.10	The Department of the Treasury
1.11	The Department of Defense
1.12	Intelligence Components Utilized by the Secretary of Defense
1.13	The Department of Energy
1.14	The Federal Bureau of Investigation

## PART 2. CONDUCT OF INTELLIGENCE ACTIVITIES

2.1	Need
2.2	Purpose
2.3	Collection of Information
2.4	Collection Techniques
2.5	Attorney General Approval
2.6	Assistance to Law Enforcement Authorities
2.7	Contracting
2.8	Consistency With Other Laws
2.9	Undisclosed Participation in Organizations Within the United States
2.10	Human Experimentation
2.11	Prohibition on Assassination
2.12	Indirect Participation

## PART 3. GENERAL PROVISIONS

3.1	Congressional Oversight
3.2	Implementation
3.3	Procedures
3.4	Definitions
3.5	Purpose and Effect
3.6	Revocation

Timely and accurate information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to the national security of the United States. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence available. For that purpose, by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the National Security Act of 1947, as amended [see Short Title note above], and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

## PART 1—GOALS, DIRECTION, DUTIES AND RESPONSIBILITIES WITH RESPECT TO THE NATIONAL INTELLIGENCE EFFORT

## 1.1 GOALS

The United States intelligence effort shall provide the President and the National Security Council with the necessary information on which to base decisions concerning the conduct and development of foreign, defense and economic policy, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.

(a) Maximum emphasis should be given to fostering analytical competition among appropriate elements of the Intelligence Community.

(b) All means, consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, shall be used to develop intelligence information for the President and the National Security Council. A balanced approach between technical collection efforts and other means should be maintained and encouraged.

(c) Special emphasis should be given to detecting and countering espionage and other threats and activities directed by foreign intelligence services against the United States Government, or United States corporations, establishments, or persons.

(d) To the greatest extent possible consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, all agencies and departments should seek to ensure full and free exchange of information in order to derive maximum benefit from the United States intelligence effort.

#### 1.2 THE NATIONAL SECURITY COUNCIL

(a) *Purpose.* The National Security Council (NSC) was established by the National Security Act of 1947 [see Short Title note above] to advise the President with respect to the integration of domestic, foreign and military policies relating to the national security. The NSC shall act as the highest Executive Branch entity that provides review of, guidance for and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities, and attendant policies and programs.

(b) *Committees.* The NSC shall establish such committees as may be necessary to carry out its functions and responsibilities under this Order. The NSC, or a committee established by it, shall consider and submit to the President a policy recommendation, including all dissents, on each special activity and shall review proposals for other sensitive intelligence operations.

#### 1.3 NATIONAL FOREIGN INTELLIGENCE ADVISORY GROUPS

(a) *Establishment and Duties.* The Director of Central Intelligence shall establish such boards, councils, or groups as required for the purpose of obtaining advice from within the Intelligence Community concerning:

- (1) Production, review and coordination of national foreign intelligence;
- (2) Priorities for the National Foreign Intelligence Program budget;
- (3) Interagency exchanges of foreign intelligence information;
- (4) Arrangements with foreign governments on intelligence matters;
- (5) Protection of intelligence sources and methods;
- (6) Activities of common concern; and
- (7) Such other matters as may be referred by the Director of Central Intelligence.

(b) *Membership.* Advisory groups established pursuant to this section shall be chaired by the Director of Central Intelligence or his designated representative and shall consist of senior representatives from organizations within the Intelligence Community and from departments or agencies containing such organizations, as designated by the Director of Central Intelligence. Groups for consideration of substantive intelligence matters will include representatives of organizations involved in the collection, processing and analysis of intelligence. A senior representative of the Secretary of Commerce, the Attorney General, the Assistant to the President for National Security Affairs, and the Office of the Secretary of Defense shall be invited to participate in any group which deals with other than substantive intelligence matters.

#### 1.4 THE INTELLIGENCE COMMUNITY

The agencies within the Intelligence Community shall, in accordance with applicable United States law and with the other provisions of this Order, conduct intelligence activities necessary for the conduct of foreign relations and the protection of the national security of the United States, including:

(a) Collection of information needed by the President, the National Security Council, the Secretaries of State and Defense, and other Executive Branch officials for the performance of their duties and responsibilities;

(b) Production and dissemination of intelligence;

(c) Collection of information concerning, and the conduct of activities to protect against, intelligence activities directed against the United States, international terrorist and international narcotics activities, and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents;

(d) Special activities;

(e) Administrative and support activities within the United States and abroad necessary for the performance of authorized activities; and

(f) Such other intelligence activities as the President may direct from time to time.

#### 1.5 DIRECTOR OF CENTRAL INTELLIGENCE

In order to discharge the duties and responsibilities prescribed by law, the Director of Central Intelligence shall be responsible directly to the President and the NSC and shall:

(a) Act as the primary adviser to the President and the NSC on national foreign intelligence and provide the President and other officials in the Executive Branch with national foreign intelligence;

(b) Develop such objectives and guidance for the Intelligence Community as will enhance capabilities for responding to expected future needs for national foreign intelligence;

(c) Promote the development and maintenance of services of common concern by designated intelligence organizations on behalf of the Intelligence Community;

(d) Ensure implementation of special activities;

(e) Formulate policies concerning foreign intelligence and counterintelligence arrangements with foreign governments, coordinate foreign intelligence and counterintelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments, and establish procedures governing the conduct of liaison by any department or agency with such services on narcotics activities;

(f) Participate in the development of procedures approved by the Attorney General governing criminal narcotics intelligence activities abroad to ensure that these activities are consistent with foreign intelligence programs;

(g) Ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information, and products;

(h) Ensure that programs are developed which protect intelligence sources, methods, and analytical procedures;

(i) Establish uniform criteria for the determination of relative priorities for the transmission of critical national foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such intelligence;

(j) Establish appropriate staffs, committees, or other advisory groups to assist in the execution of the Director's responsibilities;

(k) Have full responsibility for production and dissemination of national foreign intelligence, and authority to levy analytic tasks on departmental intelligence production organizations, in consultation with those organizations, ensuring that appropriate mechanisms for competitive analysis are developed so that diverse points of view are considered fully and differences of judgment within the Intelligence Community are brought to the attention of national policymakers;

(l) Ensure the timely exploitation and dissemination of data gathered by national foreign intelligence collection means, and ensure that the resulting intelligence is disseminated immediately to appropriate government entities and military commands;

(m) Establish mechanisms which translate national foreign intelligence objectives and priorities approved by the NSC into specific guidance for the Intelligence Community, resolve conflicts in tasking priority, provide to departments and agencies having information collection capabilities that are not part of the National Foreign Intelligence Program advisory tasking concerning collection of national foreign intelligence, and provide for the development of plans and arrangements for transfer of required collection tasking authority to the Secretary of Defense when directed by the President;

(n) Develop, with the advice of the program managers and departments and agencies concerned, the consolidated National Foreign Intelligence Program budget, and present it to the President and the Congress;

(o) Review and approve all requests for reprogramming National Foreign Intelligence Program funds, in accordance with guidelines established by the Office of Management and Budget;

(p) Monitor National Foreign Intelligence Program implementation, and, as necessary, conduct program and performance audits and evaluations;

(q) Together with the Secretary of Defense, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence programs consistent with the requirement to develop competitive analysis, and provide to and obtain from the Secretary of Defense all information necessary for this purpose;

(r) In accordance with law and relevant procedures approved by the Attorney General under this Order, give the heads of the departments and agencies access to all intelligence, developed by the CIA or the staff elements of the Director of Central Intelligence, relevant to the national intelligence needs of the departments and agencies; and

(s) Facilitate the use of national foreign intelligence products by Congress in a secure manner.

#### 1.6 DUTIES AND RESPONSIBILITIES OF THE HEADS OF EXECUTIVE BRANCH DEPARTMENTS AND AGENCIES

(a) The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant procedures approved by the Attorney General under this Order, give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States, and shall give due consideration to the requests from the Director of Central Intelligence for appropriate support for Intelligence Community activities.

(b) The heads of departments and agencies involved in the National Foreign Intelligence Program shall ensure timely development and submission to the Director of Central Intelligence by the program managers and heads of component activities of proposed national programs and budgets in the format designated by the Director of Central Intelligence, and shall also ensure that the Director of Central Intelligence is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities.

(c) The heads of departments and agencies involved in the National Foreign Intelligence Program may appeal to the President decisions by the Director of Central Intelligence on budget or reprogramming matters of the National Foreign Intelligence Program.

#### 1.7 SENIOR OFFICIALS OF THE INTELLIGENCE COMMUNITY

The heads of departments and agencies with organizations in the Intelligence Community or the heads of such organizations, as appropriate, shall:

(a) Report to the Attorney General possible violations of federal criminal laws by employees and of specified federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department or agency concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;

(b) In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;

(c) Furnish the Director of Central Intelligence and the NSC, in accordance with applicable law and procedures approved by the Attorney General under this Order, the information required for the performance of their respective duties;

(d) Report to the Intelligence Oversight Board, and keep the Director of Central Intelligence appropriately informed, concerning any intelligence activities of their organizations that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive;

(e) Protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the Director of Central Intelligence;

(f) Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence;

(g) Participate in the development of procedures approved by the Attorney General governing production and dissemination of intelligence resulting from criminal narcotics intelligence activities abroad if their departments, agencies, or organizations have intelligence responsibilities for foreign or domestic narcotics production and trafficking;

(h) Instruct their employees to cooperate fully with the Intelligence Oversight Board; and

(i) Ensure that the Inspectors General and General Counsels for their organizations have access to any information necessary to perform their duties assigned by this Order.

#### 1.8 THE CENTRAL INTELLIGENCE AGENCY

All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by this Order; the National Security Act of 1947, as amended [see Short Title note above]; the CIA Act of 1949, as amended [see Short Title of 1949 Amendment note above]; appropriate directives or other applicable law, the CIA shall:

(a) Collect, produce and disseminate foreign intelligence and counterintelligence, including information not otherwise obtainable. The collection of foreign intelligence or counterintelligence within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(b) Collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;

(c) Conduct counterintelligence activities outside the United States and, without assuming or performing any internal security functions, conduct counterintelligence activities within the United States in coordination with the FBI as required by procedures agreed upon [by] the Director of Central Intelligence and the Attorney General;

(d) Coordinate counterintelligence activities and the collection of information not otherwise obtainable when conducted outside the United States by other departments and agencies;

(e) Conduct special activities approved by the President. No agency except the CIA (or the Armed Forces of the United States in time of war declared by Congress or during any period covered by a report from the President to the Congress under the War Powers Resolution (87 Stat. 855) [50 U.S.C. 1541 et seq.]) may conduct any special activity unless the President determines that another agency is more likely to achieve a particular objective;

(f) Conduct services of common concern for the Intelligence Community as directed by the NSC;

(g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;

(h) Protect the security of its installations, activities, information, property, and employees by appropriate means, including such investigations of appli-

cants, employees, contractors, and other persons with similar associations with the CIA as are necessary; and

(i) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) and [sic] through (h) above, including procurement and essential cover and proprietary arrangements.

#### 1.9 THE DEPARTMENT OF STATE

The Secretary of State shall:

(a) Overtly collect information relevant to United States foreign policy concerns;

(b) Produce and disseminate foreign intelligence relating to United States foreign policy as required for the execution of the Secretary's responsibilities;

(c) Disseminate, as appropriate, reports received from United States diplomatic and consular posts;

(d) Transmit reporting requirements of the Intelligence Community to the Chiefs of United States Missions abroad; and

(e) Support Chiefs of Missions in discharging their statutory responsibilities for direction and coordination of mission activities.

#### 1.10 THE DEPARTMENT OF THE TREASURY

The Secretary of the Treasury shall:

(a) Overtly collect foreign financial and monetary information;

(b) Participate with the Department of State in the overt collection of general foreign economic information;

(c) Produce and disseminate foreign intelligence relating to United States economic policy as required for the execution of the Secretary's responsibilities; and

(d) Conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President of the United States, the Executive Office of the President, and, as authorized by the Secretary of the Treasury or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against such surveillance, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of the Treasury and the Attorney General.

#### 1.11 THE DEPARTMENT OF DEFENSE

The Secretary of Defense shall:

(a) Collect national foreign intelligence and be responsive to collection tasking by the Director of Central Intelligence;

(b) Collect, produce and disseminate military and military-related foreign intelligence and counterintelligence as required for execution of the Secretary's responsibilities;

(c) Conduct programs and missions necessary to fulfill national, departmental and tactical foreign intelligence requirements;

(d) Conduct counterintelligence activities in support of Department of Defense components outside the United States in coordination with the CIA, and within the United States in coordination with the FBI pursuant to procedures agreed upon by the Secretary of Defense and the Attorney General;

(e) Conduct, as the executive agent of the United States Government, signals intelligence and communications security activities, except as otherwise directed by the NSC;

(f) Provide for the timely transmission of critical intelligence, as defined by the Director of Central Intelligence, within the United States Government;

(g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized intelligence functions;

(h) Protect the security of Department of Defense installations, activities, property, information, and employees by appropriate means, including such inves-

tigations of applicants, employees, contractors, and other persons with similar associations with the Department of Defense as are necessary;

(i) Establish and maintain military intelligence relationships and military intelligence exchange programs with selected cooperative foreign defense establishments and international organizations, and ensure that such relationships and programs are in accordance with policies formulated by the Director of Central Intelligence;

(j) Direct, operate, control and provide fiscal management for the National Security Agency and for defense and military intelligence and national reconnaissance entities; and

(k) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (j) above.

#### 1.12 INTELLIGENCE COMPONENTS UTILIZED BY THE SECRETARY OF DEFENSE

In carrying out the responsibilities assigned in section 1.11, the Secretary of Defense is authorized to utilize the following:

(a) *Defense Intelligence Agency*, whose responsibilities shall include:

(1) Collection, production, or, through tasking and coordination, provision of military and military-related intelligence for the Secretary of Defense, the Joint Chiefs of Staff, other Defense components, and, as appropriate, non-Defense agencies;

(2) Collection and provision of military intelligence for national foreign intelligence and counterintelligence products;

(3) Coordination of all Department of Defense intelligence collection requirements;

(4) Management of the Defense Attache system; and

(5) Provision of foreign intelligence and counterintelligence staff support as directed by the Joint Chiefs of Staff.

(b) *National Security Agency*, whose responsibilities shall include:

(1) Establishment and operation of an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense;

(2) Control of signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;

(3) Collection of signals intelligence information for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(4) Processing of signals intelligence data for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(5) Dissemination of signals intelligence information for national foreign intelligence purposes to authorized elements of the Government, including the military services, in accordance with guidance from the Director of Central Intelligence;

(6) Collection, processing and dissemination of signals intelligence information for counterintelligence purposes;

(7) Provision of signals intelligence support for the conduct of military operations in accordance with tasking, priorities, and standards of timeliness assigned by the Secretary of Defense. If provision of such support requires use of national collection systems, these systems will be tasked within existing guidance from the Director of Central Intelligence;

(8) Executing the responsibilities of the Secretary of Defense as executive agent for the communications security of the United States Government;

(9) Conduct of research and development to meet the needs of the United States for signals intelligence and communications security;

(10) Protection of the security of its installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the NSA as are necessary;

(11) Prescribing, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the NSA, and exercising the necessary supervisory control to ensure compliance with the regulations;

(12) Conduct of foreign cryptologic liaison relationships, with liaison for intelligence purposes conducted in accordance with policies formulated by the Director of Central Intelligence; and

(13) Conduct of such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (1) through (12) above, including procurement.

(c) *Offices for the collection of specialized intelligence through reconnaissance programs*, whose responsibilities shall include:

(1) Carrying out consolidated reconnaissance programs for specialized intelligence;

(2) Responding to tasking in accordance with procedures established by the Director of Central Intelligence; and

(3) Delegating authority to the various departments and agencies for research, development, procurement, and operation of designated means of collection.

(d) *The foreign intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps*, whose responsibilities shall include:

(1) Collection, production and dissemination of military and military-related foreign intelligence and counterintelligence, and information on the foreign aspects of narcotics production and trafficking. When collection is conducted in response to national foreign intelligence requirements, it will be conducted in accordance with guidance from the Director of Central Intelligence. Collection of national foreign intelligence, not otherwise obtainable, outside the United States shall be coordinated with the CIA, and such collection within the United States shall be coordinated with the FBI;

(2) Conduct of counterintelligence activities outside the United States in coordination with the CIA, and within the United States in coordination with the FBI; and

(3) Monitoring of the development, procurement and management of tactical intelligence systems and equipment and conducting related research, development, and test and evaluation activities.

(e) *Other offices within the Department of Defense appropriate for conduct of the intelligence missions and responsibilities assigned to the Secretary of Defense*. If such other offices are used for intelligence purposes, the provisions of Part 2 of this Order shall apply to those offices when used for those purposes.

#### 1.13 THE DEPARTMENT OF ENERGY

The Secretary of Energy shall:

(a) Participate with the Department of State in overtly collecting information with respect to foreign energy matters;

(b) Produce and disseminate foreign intelligence necessary for the Secretary's responsibilities;

(c) Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and

(d) Provide expert technical, analytical and research capability to other agencies within the Intelligence Community.

#### 1.14 THE FEDERAL BUREAU OF INVESTIGATION

Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the FBI shall:

(a) Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the Intelligence Community. When a counterintelligence activity of the FBI involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;

(b) Conduct counterintelligence activities outside the United States in coordination with the CIA as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(c) Conduct within the United States, when requested by officials of the Intelligence Community designated by the President, activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the Intelligence Community, or, when requested by the Director of the National Security Agency, to support the communications security activities of the United States Government;

(d) Produce and disseminate foreign intelligence and counterintelligence; and

(e) Carry out or contract for research, development and procurement of technical systems and devices relating to the functions authorized above.

### PART 2—CONDUCT OF INTELLIGENCE ACTIVITIES

#### 2.1 NEED

Accurate and timely information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decisionmaking in the areas of national defense and foreign relations. Collection of such information is a priority objective and will be pursued in a vigorous, innovative and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.

#### 2.2 PURPOSE

This Order is intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers. Set forth below are certain general principles that, in addition to and consistent with applicable laws, are intended to achieve the proper balance between the acquisition of essential information and protection of individual interests. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

#### 2.3 COLLECTION OF INFORMATION

Agencies within the Intelligence Community are authorized to collect, retain or disseminate information concerning United States persons only in accordance with procedures established by the head of the agency concerned and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order. Those procedures shall permit collection, retention and dissemination of the following types of information:

(a) Information that is publicly available or collected with the consent of the person concerned;

(b) Information constituting foreign intelligence or counterintelligence, including such information concerning corporations or other commercial organizations. Collection within the United States of foreign intelligence not otherwise obtainable shall be undertaken by the FBI or, when significant foreign intelligence is sought, by other authorized agencies of the Intelligence Community, provided that no foreign intelligence collection by such agencies may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons;

(c) Information obtained in the course of a lawful foreign intelligence, counterintelligence, international narcotics or international terrorism investigation;

(d) Information needed to protect the safety of any persons or organizations, including those who are targets, victims or hostages of international terrorist organizations;

(e) Information needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure. Collection within the United States shall be undertaken by the FBI except that other agencies of the Intelligence Community may also collect such information concerning present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting;

(f) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;

(g) Information arising out of a lawful personnel, physical or communications security investigation;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Incidentally obtained information that may indicate involvement in activities that may violate federal, state, local or foreign laws; and

(j) Information necessary for administrative purposes.

In addition, agencies within the Intelligence Community may disseminate information, other than information derived from signals intelligence, to each appropriate agency within the Intelligence Community for purposes of allowing the recipient agency to determine whether the information is relevant to its responsibilities and can be retained by it.

#### 2.4 COLLECTION TECHNIQUES

Agencies within the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Agencies are not authorized to use such techniques as electronic surveillance, unconsented physical search, mail surveillance, physical surveillance, or monitoring devices unless they are in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such procedures shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes. These procedures shall not authorize:

(a) The CIA to engage in electronic surveillance within the United States except for the purpose of training, testing, or conducting countermeasures to hostile electronic surveillance;

(b) Unconsented physical searches in the United States by agencies other than the FBI, except for:

(1) Searches by counterintelligence elements of the military services directed against military personnel within the United States or abroad for intelligence purposes, when authorized by a military commander empowered to approve physical searches for law enforcement purposes, based upon a finding of probable cause to believe that such persons are acting as agents of foreign powers; and

(2) Searches by CIA of personal property of non-United States persons lawfully in its possession.

(c) Physical surveillance of a United States person in the United States by agencies other than the FBI, except for:

(1) Physical surveillance of present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting; and

(2) Physical surveillance of a military person employed by a nonintelligence element of a military service.

(d) Physical surveillance of a United States person abroad to collect foreign intelligence, except to obtain significant information that cannot reasonably be acquired by other means.

#### 2.5 ATTORNEY GENERAL APPROVAL

The Attorney General hereby is delegated the power to approve the use for intelligence purposes, within the

United States or against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such techniques shall not be undertaken unless the Attorney General has determined in each case that there is probable cause to believe that the technique is directed against a foreign power or an agent of a foreign power. Electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1801 et seq.], shall be conducted in accordance with that Act, as well as this Order.

#### 2.6 ASSISTANCE TO LAW ENFORCEMENT AUTHORITIES

Agencies within the Intelligence Community are authorized to:

(a) Cooperate with appropriate law enforcement agencies for the purpose of protecting the employees, information, property and facilities of any agency within the Intelligence Community;

(b) Unless otherwise precluded by law or this Order, participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers, or international terrorist or narcotics activities;

(c) Provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the General Counsel of the providing agency; and

(d) Render any other assistance and cooperation to law enforcement authorities not precluded by applicable law.

#### 2.7 CONTRACTING

Agencies within the Intelligence Community are authorized to enter into contracts or arrangements for the provision of goods or services with private companies or institutions in the United States and need not reveal the sponsorship of such contracts or arrangements for authorized intelligence purposes. Contracts or arrangements with academic institutions may be undertaken only with the consent of appropriate officials of the institution.

#### 2.8 CONSISTENCY WITH OTHER LAWS

Nothing in this Order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.

#### 2.9 UNDISCLOSED PARTICIPATION IN ORGANIZATIONS WITHIN THE UNITED STATES

No one acting on behalf of agencies within the Intelligence Community may join or otherwise participate in any organization in the United States on behalf of any agency within the Intelligence Community without disclosing his intelligence affiliation to appropriate officials of the organization, except in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such participation shall be authorized only if it is essential to achieving lawful purposes as determined by the agency head or designee. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members except in cases where:

(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation; or

(b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power.

#### 2.10 HUMAN EXPERIMENTATION

No agency within the Intelligence Community shall sponsor, contract for or conduct research on human subjects except in accordance with guidelines issued by the Department of Health and Human Services. The

subject's informed consent shall be documented as required by those guidelines.

#### 2.11 PROHIBITION ON ASSASSINATION

No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

#### 2.12 INDIRECT PARTICIPATION

No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.

### PART 3—GENERAL PROVISIONS

#### 3.1 CONGRESSIONAL OVERSIGHT

The duties and responsibilities of the Director of Central Intelligence and the heads of other departments, agencies, and entities engaged in intelligence activities to cooperate with the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be as provided in title 50, United States Code, section 413. The requirements of section 662 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2422), and section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413), shall apply to all special activities as defined in this Order.

#### 3.2 IMPLEMENTATION

The NSC, the Secretary of Defense, the Attorney General, and the Director of Central Intelligence shall issue such appropriate directives and procedures as are necessary to implement this Order. Heads of agencies within the Intelligence Community shall issue appropriate supplementary directives and procedures consistent with this Order. The Attorney General shall provide a statement of reasons for not approving any procedures established by the head of an agency in the Intelligence Community other than the FBI. The National Security Council may establish procedures in instances where the agency head and the Attorney General are unable to reach agreement on other than constitutional or other legal grounds.

#### 3.3 PROCEDURES

Until the procedures required by this Order have been established, the activities herein authorized which require procedures shall be conducted in accordance with existing procedures or requirements established under Executive Order No. 12036 [formerly set out above]. Procedures required by this Order shall be established as expeditiously as possible. All procedures promulgated pursuant to this Order shall be made available to the congressional intelligence committees.

#### 3.4 DEFINITIONS

For the purposes of this Order, the following terms shall have these meanings:

(a) *Counterintelligence* means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

(b) *Electronic surveillance* means acquisition of a non-public communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly [sic] present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.

(c) *Employee* means a person employed by, assigned to or acting for an agency within the Intelligence Community.

(d) *Foreign intelligence* means information relating to the capabilities, intentions and activities of foreign

powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

(e) *Intelligence activities* means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to this Order.

(f) *Intelligence Community* and *agencies within the Intelligence Community* refer to the following agencies or organizations:

- (1) The Central Intelligence Agency (CIA);
- (2) The National Security Agency (NSA);
- (3) The Defense Intelligence Agency (DIA);
- (4) The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
- (5) The Bureau of Intelligence and Research of the Department of State;
- (6) The intelligence elements of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy; and
- (7) The staff elements of the Director of Central Intelligence.

(g) *The National Foreign Intelligence Program* includes the programs listed below, but its composition shall be subject to review by the National Security Council and modification by the President:

- (1) The programs of the CIA;
- (2) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance, except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded;

(3) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities;

(4) Activities of the staff elements of the Director of Central Intelligence;

(5) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

(h) *Special activities* means activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions.

(i) *United States person* means a United States citizen, an alien known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

#### 3.5 PURPOSE AND EFFECT

This Order is intended to control and provide direction and guidance to the Intelligence Community. Nothing contained herein or in any procedures promulgated hereunder is intended to confer any substantive or procedural right or privilege on any person or organization.

#### 3.6 REVOCATION

Executive Order No. 12036 of January 24, 1978, as amended, entitled "United States Intelligence Activities," is revoked.

RONALD REAGAN.

EXECUTIVE ORDER NO. 12334

Ex. Ord. No. 12334, Dec. 4, 1981, 46 F.R. 59955, as amended by Ex. Ord. No. 12701, Feb. 14, 1990, 55 F.R.

5953, which established the President's Intelligence Oversight Board, was revoked by Ex. Ord. No. 12863, § 3.3, Sept. 13, 1993, 58 F.R. 48441, set out below.

EX. ORD. NO. 12863. PRESIDENT'S FOREIGN INTELLIGENCE  
ADVISORY BOARD

Ex. Ord. No. 12863, Sept. 13, 1993, 58 F.R. 48441, as amended by Ex. Ord. No. 13070, Dec. 15, 1997, 62 F.R. 66493, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to enhance the security of the United States by improving the quality and effectiveness of intelligence available to the United States, and to assure the legality of activities of the Intelligence Community, it is ordered as follows:

PART I. ASSESSMENT OF INTELLIGENCE  
ACTIVITIES

SECTION 1.1. There is hereby established within the White House Office, Executive Office of the President, the President's Foreign Intelligence Advisory Board (PFIAB). The PFIAB shall consist of not more than 16 members, who shall serve at the pleasure of the President and shall be appointed by the President from among trustworthy and distinguished citizens outside the Government who are qualified on the basis of achievement, experience and independence. The President shall establish the terms of the members upon their appointment. To the extent practicable, one-third of the PFIAB at any one time shall be comprised of members whose term of service does not exceed 2 years. The President shall designate a Chairman and Vice Chairman from among the members. The PFIAB shall utilize full-time staff and consultants as authorized by the President. Such staff shall be headed by an Executive Director, appointed by the President.

SEC. 1.2. The PFIAB shall assess the quality, quantity, and adequacy of intelligence collection, of analysis and estimates, and of counterintelligence and other intelligence activities. The PFIAB shall have the authority to review continually the performance of all agencies of the Federal Government that are engaged in the collection, evaluation, or production of intelligence or the execution of intelligence policy. The PFIAB shall further be authorized to assess the adequacy of management, personnel and organization in the intelligence agencies. The heads of departments and agencies of the Federal Government, to the extent permitted by law, shall provide the PFIAB with access to all information that the PFIAB deems necessary to carry out its responsibilities.

SEC. 1.3. The PFIAB shall report directly to the President and advise him concerning the objectives, conduct, management and coordination of the various activities of the agencies of the Intelligence Community. The PFIAB shall report periodically, but at least semi-annually, concerning its findings and appraisals and shall make appropriate recommendations for the improvement and enhancement of the intelligence efforts of the United States.

SEC. 1.4. The PFIAB shall consider and recommend appropriate action with respect to matters, identified to the PFIAB by the Director of Central Intelligence, the Central Intelligence Agency, or other Government agencies engaged in intelligence or related activities, in which the advice of the PFIAB will further the effectiveness of the national intelligence effort. With respect to matters deemed appropriate by the President, the PFIAB shall advise and make recommendations to the Director of Central Intelligence, the Central Intelligence Agency, and other Government agencies engaged in intelligence and related activities, concerning ways to achieve increased effectiveness in meeting national intelligence needs.

PART II. OVERSIGHT OF INTELLIGENCE  
ACTIVITIES

SEC. 2.1. The Intelligence Oversight Board (IOB) is hereby established as a standing committee of the

PFIAB. The IOB shall consist of no more than four members designated by the President from among the membership of the PFIAB. The Chairman of the PFIAB may also serve as the Chairman or a member of the IOB if so designated by the President. The IOB shall utilize such full-time staff and consultants as authorized by the Chairman of the IOB with the concurrence of the Chairman of the PFIAB.

SEC. 2.2. The IOB shall:

(a) prepare for the President reports of intelligence activities that the IOB believes may be unlawful or contrary to Executive order or Presidential directive;

(b) forward to the Attorney General reports received concerning intelligence activities that the IOB believes may be unlawful or contrary to Executive order or Presidential directive;

(c) review the internal guidelines of each agency within the Intelligence Community that concern the lawfulness of intelligence activities;

(d) review the practices and procedures of the Inspectors General and General Counsel of the Intelligence Community for discovering and reporting intelligence activities that may be unlawful or contrary to Executive order or Presidential directive; and

(e) conduct such investigations as the IOB deems necessary to carry out its functions under this order.

SEC. 2.3. The IOB shall report to the President. The IOB shall consider and take appropriate action with respect to matters identified by the Director of Central Intelligence, the Central Intelligence Agency or other agencies of the Intelligence Community. With respect to matters deemed appropriate by the President, the IOB shall advise and make appropriate recommendations to the Director of Central Intelligence, the Central Intelligence Agency and other agencies of the Intelligence Community.

SEC. 2.4. The heads of departments and agencies of the Intelligence Community, to the extent permitted by law, shall provide the IOB with all information that the IOB deems necessary to carry out its responsibilities. Inspectors General and General Counsel of the Intelligence Community, to the extent permitted by law, shall report to the IOB, at least on a quarterly basis and from time to time as necessary or appropriate, concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive.

PART III. GENERAL PROVISIONS

SEC. 3.1. Information made available to the PFIAB, or members of the PFIAB acting in their IOB capacity, shall be given all necessary security protection in accordance with applicable laws and regulations. Each member of the PFIAB, each member of the PFIAB's staff and each of the PFIAB's consultants shall execute an agreement never to reveal any classified information obtained by virtue of his or her services with the PFIAB except to the President or to such persons as the President may designate.

SEC. 3.2. Members of the PFIAB shall serve without compensation but may receive transportation expenses and per diem allowance as authorized by law. Staff and consultants to the PFIAB shall receive pay and allowances as authorized by the President.

SEC. 3.3. Executive Order No. 12334 of December 4, 1981, as amended, and Executive Order No. 12537 of October 28, 1985, as amended [50 U.S.C. 403 note], are revoked.

WILLIAM J. CLINTON.

ACT REFERRED TO IN OTHER SECTIONS

The National Security Act of 1947 is referred to in section 47e of this title; section 469 of Appendix to this title; title 21 sections 1704, 1903.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 sections 113, 125, 155.



**§ 401a. Definitions**

As used in this Act:

(1) The term “intelligence” includes foreign intelligence and counterintelligence.

(2) The term “foreign intelligence” means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

(3) The term “counterintelligence” means information gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

(4) The term “intelligence community” includes—

(A) the Office of the Director of Central Intelligence, which shall include the Office of the Deputy Director of Central Intelligence, the National Intelligence Council (as provided for in section 403-5(b)(3)<sup>1</sup> of this title), and such other offices as the Director may designate;

(B) the Central Intelligence Agency;

(C) the National Security Agency;

(D) the Defense Intelligence Agency;

(E) the National Imagery and Mapping Agency;

(F) the National Reconnaissance Office;

(G) other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;

(H) the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of the Treasury, the Department of Energy, and the Coast Guard;

(I) the Bureau of Intelligence and Research of the Department of State; and

(J) such other elements of any other department or agency as may be designated by the President, or designated jointly by the Director of Central Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

(5) The terms “national intelligence” and “intelligence related to the national security”—

(A) each refer to intelligence which pertains to the interests of more than one department or agency of the Government; and

(B) do not refer to counterintelligence or law enforcement activities conducted by the Federal Bureau of Investigation except to the extent provided for in procedures agreed to by the Director of Central Intelligence and the Attorney General, or otherwise as expressly provided for in this title.<sup>2</sup>

(6) The term “National Foreign Intelligence Program” refers to all programs, projects, and activities of the intelligence community, as well as any other programs of the intelligence

community designated jointly by the Director of Central Intelligence and the head of a United States department or agency or by the President. Such term does not include programs, projects, or activities of the military departments to acquire intelligence solely for the planning and conduct of tactical military operations by United States Armed Forces.

(July 26, 1947, ch. 343, §3, as added Pub. L. 102-496, title VII, §702, Oct. 24, 1992, 106 Stat. 3188; amended Pub. L. 103-359, title V, §501(a)(1), Oct. 14, 1994, 108 Stat. 3428; Pub. L. 104-201, div. A, title XI, §1122(b)(1), Sept. 23, 1996, 110 Stat. 2687; Pub. L. 107-56, title IX, §902, Oct. 26, 2001, 115 Stat. 387; Pub. L. 107-108, title I, §105, Dec. 28, 2001, 115 Stat. 1397.)

**REFERENCES IN TEXT**

This Act, referred to in text, means act July 26, 1947, ch. 343, 61 Stat. 495, as amended, known as the National Security Act of 1947. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

This title, referred to in par. (5)(B), probably should be “this Act”, meaning act July 26, 1947, see above, because this section is not a part of any title of act of July 26, 1947.

**AMENDMENTS**

2001—Par. (2). Pub. L. 107-56, §902(1), inserted “, or international terrorist activities” before period at end. Par. (3). Pub. L. 107-56, §902(2), substituted “, and activities conducted,” for “and activities conducted”.

Par. (4)(H). Pub. L. 107-108 struck out “and” before “the Department of Energy” and inserted “, and the Coast Guard” before semicolon.

1996—Par. (4)(E). Pub. L. 104-201 substituted “National Imagery and Mapping Agency” for “Central Imagery Office”.

1994—Par. (4)(E). Pub. L. 103-359 substituted “the Central Imagery Office” for “the central imagery authority within the Department of Defense”.

**EFFECTIVE DATE OF 1996 AMENDMENT**

Amendment by Pub. L. 104-201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104-201, set out as a note under section 193 of Title 10, Armed Forces.

**AUTHORITY OF SECRETARY OF STATE**

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of Title 22, Foreign Relations and Inter-course, and section 161(d) of Pub. L. 103-236, set out as a note under section 2651a of Title 22.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 403-2a, 403-5d, 403-8, 404j of this title; title 18 section 2517; title 22 section 1442a.

**SUBCHAPTER I—COORDINATION FOR NATIONAL SECURITY****§ 402. National Security Council****(a) Establishment; presiding officer; functions; composition**

There is established a council to be known as the National Security Council (hereinafter in this section referred to as the “Council”).

The President of the United States shall preside over meetings of the Council: *Provided*, That

<sup>1</sup> So in original. Probably should be section “403-3(b)(3)”.

<sup>2</sup> See References in Text note below.